

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b)) MM Docket No. 97-118
Table of Allotments,) RM-9061
FM Broadcast Stations)
(Walhalla, Michigan))

RECEIVED
JUL 22 1997
FCC

To: The Chief, Allocations Branch

REPLY COMMENTS AND OPPOSITION

Comes now BAY VIEW BROADCASTING, INC., ("Bay View"), pursuant to Section 1.415 of the Commission's Rules, and submits the following "*Reply Comments*" in response to Report No. 2209 *Petitions For Rulemaking Filed*, released July 7, 1997. ^{1/}

^{1/} The Report was released July 7, 1997, and specified that Bay View's one-step upgrade application at Pentwater, Michigan (BMPH-970319IE) was being treated as a counterproposal in MM Docket No. 97-118. As specified therein "*Reply comments to this counterproposal should be submitted in this docket no later than 15 days (rather than 30 days) after the date of this Public Notice.*" Accordingly, the instant *Reply Comments* are timely filed.

Dee

BACKGROUND

Bay View filed its "one-step upgrade" application on March 19, 1997. At that time, Bay View was unaware of a petition filed on February 24, 1997, by Roger Lewis Hoppe II ("Hoppe") which proposed the allocation of Channel 274A to the tiny unincorporated hamlet of Walhalla, Michigan, as that community's first local service.

BAY VIEW'S UPGRADE SHOULD BE PREFERRED OVER THE WALHALLA ALLOCATION

In accordance with the allotment criteria set forth in *Revision of FM Policies and Procedures*, 90 FCC2d 88, 51 RR2d 807 (1982), *recon. denied* 56 RR2d 448 (1984), conflicting proposals are weighed as follows:

- (1) First full-time aural service;
 - (2) second full-time aural service;
 - (3) first local service;
 - (4) other public interest matters.
- [(Co-equal weight given to priorities (2) and (3).)]

Although the allotment of Channel 274A to Walhalla, Michigan, would presumably be weighed under Priority #1, as it would represent the first local service to the community of Walhalla, Michigan, the Commission has consistently refused to allot channels to communities that were essentially "wide spots in the road", with little or no social, economic or commercial organizations. Although the community of Walhalla is listed in the 1995 edition of the Rand McNally Commercial Atlas, mere geographical location is not sufficient to establish a "community" status. *See Vimville, Mississippi*, 48 FR 5974 (1983). Furthermore, the presence of a post office and a zip code is not sufficient to establish community status. *See Coker, Alabama*, 43 R.R. 2d 190 (1978). As such,

Bay View's proposal to upgrade Station WMOM(FM) to maximum Class A facilities by way of its pending "one-step upgrade" application should be preferred over the allotment of a channel to Walhalla.

ALTERNATE CHANNELS

In an attempt to resolve the mutual-exclusivity of Bay View's upgrade versus Hoppe's proposed new allotment, Bay View conducted a frequency search to determine if there were any alternate channels that could be allocated to Walhalla, should the Commission determine that the tiny hamlet of Walhalla be deserving of an FM broadcast station. That study indicates that Channel 255A may be allocated to Walhalla. In fact, Hoppe has already proposed just such an allotment, in a Petition for Rule making filed on June 12, 1997. Surely Hoppe does not expect the Commission to allocate both channels to an unincorporated community that appears to be little more than a spot on the map. If Hoppe desires a first local broadcast in such a miniscule hamlet, and if the Commission determines that Walhalla is a community for allotment purposes, Bay View encourages the Commission to allocate Channel 255A to Walhalla as its first local service and to deny the proposal to allocate Channel 274A to Walhalla so that Bay View's "one-step upgrade" application may be granted.

CONCLUSION

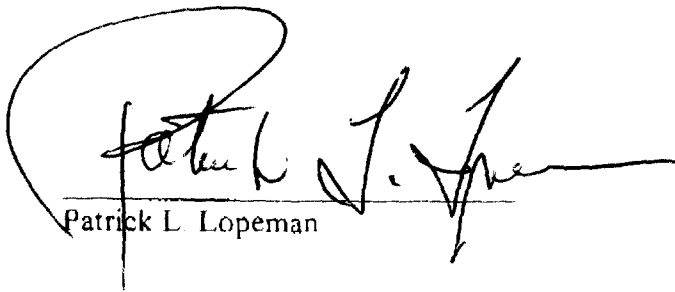
Based on the foregoing, Bay View respectfully requests that Hoppe's proposal to allocate Channel 274A to Walhalla, Michigan, be DENIED.

CERTIFICATE OF SERVICE

I, Patrick L. Lopeman, certify that I have this 21st day of July, 1997, sent by regular United States mail, postage prepaid, a copy of the foregoing "Reply Comments" to the following:

Mr. John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, NW - Room 8322
Washington, DC 20554

Roger Lewis Hoppe II
12013 U.S. 31 South
Bear Lake, MI 49614



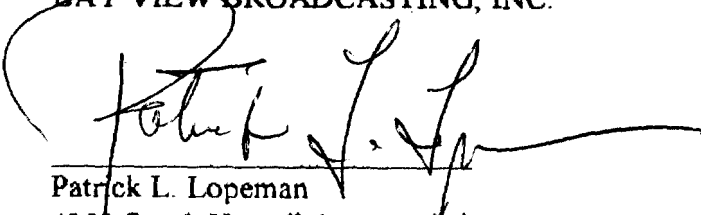
Patrick L. Lopeman

VERIFICATION

In accordance with Section 1.52 of the Commission's Rules, I, Patrick L. Lopeman, certify that I have examined the foregoing "Reply Comments and Opposition" and that they are true and correct to the best of my knowledge and belief.

Respectfully submitted,

BAY VIEW BROADCASTING, INC.

A handwritten signature in black ink, appearing to read "Patrick L. Lopeman", written over a horizontal line.

Patrick L. Lopeman
4359 South Howell Avenue, Suite 106
Milwaukee, WI 53207
(414) 482-2638

July 21, 1997